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| 10/664,645  | 09/19/2003  | Kate E. Nordland     | 86012-34000-USPT    | 5037             |
| 28763   | 7590        | 07/11/2005           | EXAMINER            |                  |
| WINSTON & STRAWN LLP<br>1700 K STREET, N.W.<br>WASHINGTON, DC 20006 |             |                      | SMALLEY, JAMES N    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3727                |                  |
| DATE MAILED: 07/11/2005   |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/664,645

Applicant(s)

NORDLAND, KATE E.

Examiner

James N. Smalley

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-74 is/are pending in the application.
- 4a) Of the above claim(s) 70-74 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/6/2004; 2/9/2004
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-69, drawn to the hinged polymeric foam container, classified in class 220, subclass 839.
  - II. Claims 70-74, drawn to a method of forming a hinged polymeric foam container, classified in class 264, subclass 321.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions (I) and (II) are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the containers can be formed of blow molding, compression molding, injection molding, or carving.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group (I) is not required for Group (II), restriction for examination purposes as indicated is proper.
5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Art Unit: 3727

6. During a telephone conversation with Brian Pollack, Reg. 47,001, on 03 June 2005 a provisional election was made with traverse to prosecute the invention of Group (I), claims 1-69. Affirmation of this election must be made by applicant in replying to this Office action. Claims 70-74 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5, 7-9, 13-15, 19-22, 24-26, 30, and 34-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong US 6,460,716 in view of Wells US 5,092,479 and in view of Jewell US 4,132,344.

Wong '716 teaches a container (10) comprising a base (12) and lid (14), whereby the base comprises a bottom wall (22) and sidewall (24), first generally upwardly projecting wall (50), first generally outwardly projecting ledge (26), a second generally outwardly projecting ledge (unlabeled), and a second generally upwardly projecting wall (unlabeled), and, whereby the lid comprises a first generally outwardly projecting surface (38), a second generally outwardly projecting surface (36), and a first generally upwardly projecting wall (60).

Wong '716 does not teach the container base and lid being connected by a hinge.

Wells '479 teaches it is known to provide a hinge (14) to a rectangular container and base, whereby the lid snap-fits within the base. It is well known to hinge a container lid and base together, in order to prevent separation of the two parts, and, to promote a controlled opening and closing path. Examiner notes that because the container of Wells '479 also comprises a lid which is snap-fit within the periphery of the base, there is a reasonable expectation of success of the combination.

Art Unit: 3727

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Wong '716, providing a hinge, as taught by Wells '479, motivated by the benefit of securing the lid to the base to prevent separation of the two elements, and, to promote a controlled opening and closing path of the lid.

Furthermore, Wong '716 does not teach the container being formed of a foamed thermoplastic, instead only disclosing the container is to be made of plastic. However, the reference does suggest a solid plastic, when disclosing in col. 4, lines 25-26 that "Good results have been obtained by injection molding."

Jewell '344 teaches container for food, formed of foamed thermoplastic, and teaches in col. 1, lines 24-30, "The utilization of expanded polystyrene for sandwich packaging provides efficiencies in material use not possible with denser paper or solid plastic. This represents a very substantial reduction in raw materials with the attendant conservation of resources."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Wong '716, forming it of foamed thermoplastic, as taught by Jewell '344, motivated by the benefit of reducing the materials used in forming the container.

9. Claims 10-11 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong US 6,460,716 in view of Wells US 5,092,479 and in view of Jewell US 4,132,344, as applied above under 35 U.S.C. 103(a) to claims 1 and 20, and further in view of Schlaupitz et al. US 5,269,430.

Wong '716 does not teach tabs extending from the base, and from the lid, to facilitate the opening of the container.

Schlaupitz '430 teaches tabs (39) and (40) extending from the base and from the lid, which assist a user in separating the lid from the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid and base of Wong '716, providing tabs such as those taught by Schlaupitz '430, motivated by the benefit of providing means for a user to pry open the lid from the base.

Art Unit: 3727

10. Claims 12 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong US 6,460,716 in view of Wells US 5,092,479 and in view of Jewell US 4,132,344, as applied above under 35 U.S.C. 103(a) to claims 1 and 20, and further in view of Payne US 4,915,251.

Wong '716, as modified above, does not teach an indentation to assist in opening the container from a closed position.

Payne '251 teaches impressions (58) and (60) to assist a user in opening the container lid.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid of Wong '716, providing the impressions taught by Payne '251, motivated by the benefit of providing a user a means to assist in opening the lid.

11. Claims 16, 31 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong US 6,460,716 in view of Wells US 5,092,479 and in view of Jewell US 4,132,344, as applied above under 35 U.S.C. 103(a) to claims 1 and 20, and further in view of Stevens et al. US 6,087,447.

Wong '716, as modified above, does not teach the foam comprising an alkenyl aromatic polymer.

Stevens '447 teaches forming foam with aromatic polymers.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container of Wong '716 with the foam taught by Stevens '447, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

12. Claims 17-18 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong US 6,460,716 in view of Wells US 5,092,479 and in view of Jewell US 4,132,344, as applied above under 35 U.S.C. 103(a) to claims 1 and 20, and further in view of Chou US 6,883,678.

Regarding claims 17-18 and 32, Wong '716 does not teach the container being circular.

Chou '678 teaches, in figures 5 and 10, it is within ordinary skill to vary the shape of a container between rectangular and circular configurations. It is known to vary the shape of containers in order to provide an appropriate storage space for like-shaped objects, or for aesthetic reasons.

Art Unit: 3727

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Wong '716, forming it to a circular shape, as taught by Chou '678, motivated by the benefit of forming the container to hold circular objects. Furthermore, Examiner notes a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re. Dailey et al.*, 149 USPQ 47.

13. Claims 20-22, 24-26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong US 6,460,716 in view of Jewell US 4,132,344.

Wong '716 teaches a container (10) comprising a base (12) and lid (14), whereby the base comprises a bottom wall (22) and sidewall (24), first generally upwardly projecting wall (50), first generally outwardly projecting ledge (26), a second generally outwardly projecting ledge (unlabeled), and a second generally upwardly projecting wall (unlabeled), and, whereby the lid comprises a first generally outwardly projecting surface (38), a second generally outwardly projecting surface (36), and a first generally upwardly projecting wall (60).

Wong '716 does not teach the container being formed of a foamed thermoplastic, instead only disclosing the container is to be made of plastic. However, the reference does suggest a solid plastic, when disclosing in col. 4, lines 25-26 that "Good results have been obtained by injection molding."

Jewell '344 teaches container for food, formed of foamed thermoplastic, and teaches in col. 1, lines 24-30, "The utilization of expanded polystyrene for sandwich packaging provides efficiencies in material use not possible with denser paper or solid plastic. This represents a very substantial reduction in raw materials with the attendant conservation of resources."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Wong '716, forming it of foamed thermoplastic, as taught by Jewell '344, motivated by the benefit of reducing the materials used in forming the container. Furthermore, Examiner notes it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Art Unit: 3727

14. Claims 6, 23, 33 and 42-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong US 6,460,716 in view of Wells US 5,092,479 and in view of Jewell US 4,132,344 as applied above to claims 1, 20, 22 and 34, and further in view of Mangla US 5,758,791.

Wong '716 does not teach the first upwardly projecting wall forming an undercut which extends over the second sealing area.

Mangla '791 teaches undercuts formed by projecting tabs (62) to secure a lid periphery by a snap-lock connection.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the base of Wong '716, replacing the snap engagement between lid ledge (42) and surface (54), with the interlocking projections taught by Mangla '791, because such is a mechanical equivalent means for snap engaging a lid to a container base, in order to seal the container.

15. Claims 47-50 and 61-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong US 6,460,716 in view of Mangla US 5,758,791 and in view of Jewell US 4,132,344.

Wong '716 teaches a container (10) comprising a base (12) and lid (14), whereby the base comprises a bottom wall (22) and sidewall (24), first generally upwardly projecting wall (50), first generally outwardly projecting ledge (26), a second generally outwardly projecting ledge (unlabeled), and a second generally upwardly projecting wall (unlabeled), and, whereby the lid comprises a first generally outwardly projecting surface (38), a second generally outwardly projecting surface (36), and a first generally upwardly projecting wall (60).

Wong '716 does not teach the first upwardly projecting wall forming an undercut which extends over the second sealing area.

Mangla '791 teaches undercuts formed by projecting tabs (62) to secure a lid periphery by a snap-lock connection.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the base of Wong '716, replacing the snap engagement between lid ledge (42) and



Art Unit: 3727

surface (54), with the interlocking projections taught by Mangla '791, because such is a mechanical equivalent means for snap engaging a lid to a container base, in order to seal the container.

Furthermore, Wong '716 does not teach the container being formed of a foamed thermoplastic, instead only disclosing the container is to be made of plastic. However, the reference does suggest a solid plastic, when disclosing in col. 4, lines 25-26 that "Good results have been obtained by injection molding."

Jewell '344 teaches container for food, formed of foamed thermoplastic, and teaches in col. 1, lines 24-30, "The utilization of expanded polystyrene for sandwich packaging provides efficiencies in material use not possible with denser paper or solid plastic. This represents a very substantial reduction in raw materials with the attendant conservation of resources."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Wong '716, forming it of foamed thermoplastic, as taught by Jewell '344, motivated by the benefit of reducing the materials used in forming the container.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

See attached PTO-892, teaching various mating containers comprising a lid and base, and, teaching foams with aromatic polymers.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
4/27/05